

FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

Vermont Occupational Safety and Health Administration
(VOSHA)



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I. Executive Summary

The purpose of this report is to assess the Vermont Occupational Safety and Health Administration's (VOSHA's) performance for Fiscal Year (FY) 2017 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

Over the past few fiscal years, VOSHA has been guided by two first-line managers who have been committed to strengthening all aspects of the program. By FY 2017, VOSHA had moved far beyond the performance issues that were gripping the State Plan when these managers first arrived in mid-2013. As evidence of VOSHA's stability, there was only one finding in the FY 2016 Follow-up FAME Report, and it was related to the State Plan closing inspections without having adequate documentation in the case file. In FY 2017, VOSHA resolved this issue.

Although VOSHA remedied this finding, another problem with abatement surfaced in FY 2017. Specifically, VOSHA did not try to obtain abatement in several cases that were in debt collection. The State Plan now has a better handle on this situation; however, the Occupational Safety and Health Administration (OSHA) has made an observation with regard to this issue to ensure that it does not reoccur.

In addition to the abatement issue, OSHA identified three more areas that VOSHA needs to shore up, and these are also listed as observations in this report. One relates to case file documentation, another pertains to the low penalty retention percentage, and the third relates to using OSHA Information System (OIS) reports to monitor program performance.

Overall, however, VOSHA had many high points in FY 2017. For example, the State Plan had an acceptable average lapse time for health cases for the first time in several years; as a result, OSHA closed the observation that was related to this issue. The whistleblower protection program also performed well on many fronts, and no issues were identified with this program. Last but not least, VOSHA completed the lengthy rulemaking process for OSHA's maximum penalty increases; as discussed later in this report, this was no small achievement since the State Plan had to seek approval from both houses of the state legislature and the governor.

Although VOSHA had many positive outcomes in FY 2017, budgetary concerns resulted in the decision not to fill one of two vacant compliance safety and health officer (CSHO) positions that arose during the year. As discussed in this report, VOSHA does not intend to fill this vacancy any time soon.

Thus, this report contains no new findings and four observations, including one that is continued and three that are new. Appendix A, which describes the new and continued findings and recommendations, has been left blank. Appendix B describes the four observations subject to continued monitoring and the related federal monitoring plans. Appendix C describes the status of the one and only finding from the FY 2016 FAME Report with the associated completed corrective action.

II. State Plan Background

A. Background

VOSHA has been administered by the Vermont Department of Labor, Division of Workers' Compensation and Safety since July 1, 2005. The Commissioner of Labor is the state designee, and VOSHA is headquartered in Montpelier, Vermont.

VOSHA's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (V.S.A.) §§201-232. Under these statutes, VOSHA conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 21 V.S.A. §231 prohibits employers from retaliating against workers for exercising their rights under VOSHA's occupational safety and health statutes and authorizes the investigation and prosecution of complaints of workplace retaliation. An express private right of action for workers who believe that workplace retaliation or discrimination has occurred is contained in 21 V.S.A. §232.

In 1978, the U.S. Court of Appeals, in *AFL-CIO v. Marshall*, ordered OSHA to create a formula to set enforcement staffing benchmark levels for each State Plan. Meeting these staffing benchmark levels is a requirement for a State Plan to attain final approval status. VOSHA does not have final approval status and due to a limited state budget, cannot allocate the amount of staff that is sufficient to meet its benchmarks levels. VOSHA began FY 2017 at the allocated staffing level of eight CSHOs and one full-time workplace retaliation investigator; however, two CSHOs left the State Plan in FY 2017, and only one has been replaced. The State Plan also has one full-time administrative support person and two full-time managers (the director and the compliance supervisor).

As discussed later in this report, most of the duties related to compliance assistance are performed by the VOSHA director, with some assistance from CSHOs and the compliance supervisor. VOSHA's state and local government consultation program consists of two safety and health consultants who commit a portion of their time to providing on-site consultation services to state and local government workplaces.

VOSHA has two unique standards: one addressing permissible exposure limits (PELs) and one for electrical power generation, transmission, and distribution. The PELs enforced by VOSHA are those issued by OSHA in 1988 and subsequently overturned in court. They are considerably stricter than OSHA's current PELs. Construction, manufacturing, transportation and warehousing, wholesale trade, and healthcare are VOSHA's high-hazard, targeted industries.

VOSHA's coverage of state and local government workers is identical to that of private sector workers, including citation issuance and first instance sanctions. VOSHA also administers the Green Mountain Voluntary Protection Program (GMVPP), the Project WorkSAFE (consultation), and the Safety and Health Achievement Recognition Program.

B. Major New Issues

Based on financial close-out forms, VOSHA's federal funding award has remained constant at \$726,900 since FY 2015. In the State OSHA Annual Report (SOAR), VOSHA indicates that this level of funding is not keeping up with the State Plan's annual increases in operating expenses.

As mentioned earlier, one safety CSHO and one health CSHO left the program in FY 2017. To date, VOSHA has filled only the safety CSHO position. VOSHA has reduced the goal for inspections from 300 in FY 2017 to 250 in FY 2018, citing the concern that it does not have the funds needed to hire another new CSHO. VOSHA has also alerted OSHA that budget cuts to the State Plan may occur in FY 2018 if the current level of funding does not sufficiently cover operating expenses.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year, and as such, OSHA was required to conduct on-site evaluations and case file reviews. OSHA conducted two separate on-site reviews at VOSHA's headquarters in Montpelier, Vermont. One of these on-site evaluations focused on evaluating the State Plan's workplace retaliation program while the other focused primarily on the enforcement program. Case files were reviewed to assess the overall effectiveness of each program and also to determine the status of the finding and observations from the FY 2016 Follow-up FAME Report.

Enforcement On-site Evaluation

From November 6 - 9, 2017, OSHA conducted an on-site evaluation of VOSHA's enforcement program. OSHA's on-site review team consisted of five personnel: a program analyst, two Assistant Area Directors, the Region's Voluntary Protection Programs (VPP) manager, and a safety specialist. The OSHA review team conducted an opening conference on November 6, 2017, with the Vermont Commissioner of Labor, the director of the Workers' Compensation and Safety Division, the VOSHA director, and the compliance supervisor.

During this evaluation, OSHA reviewed 59 safety and health inspection files, most of which were randomly selected from a universe of the 224 inspections that VOSHA opened and closed in FY 2017. OSHA also reviewed five files related to GMVPP sites, two Alliance files, and the disposition of 20 cases that had citations appealed to the VOSHA Review Board in FY 2016 and FY 2017.

During the on-site review, OSHA conducted interviews with the director, the occupational safety compliance supervisor, the administrative assistant, VOSHA's general counsel, and also a staff attorney. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as progress in correcting the finding from the FY 2016 Follow-up FAME Report, cases filed with the review board, standard and Federal Program Change (FPC)

adoptions, compliance assistance, and abatement tracking, etc. OSHA also interviewed the attorney who handles debt collection to discuss the State Plan's debt collection protocol.

The Commissioner of Labor, all of the staff mentioned above, and most of the State Plan's CSHOs attended the closing conference, which was held on November 9, 2017. During this meeting, OSHA discussed the issues that were identified during the case file review, and there was a friendly exchange of questions, information, and suggestions that benefited both OSHA and the State Plan.

Workplace Retaliation Program On-site Evaluation

Two personnel from OSHA, an investigator, and an Acting Regional Supervisory Investigator, conducted an on-site review of VOSHA's workplace retaliation program on February 12-13, 2018, at the Vermont Department of Labor's offices in Montpelier, Vermont. During the on-site review, 10 docketed/completed cases were examined, as well as four cases that were administratively closed (screened out). OSHA randomly selected these 14 cases from a total of 128 cases that had been opened by VOSHA from October 1, 2015, through September 30, 2017. Cases were reviewed for completeness, legal sufficiency, and agreement with data contained in the national database. The principal personnel responsible for the workplace retaliation program were interviewed, including the VOSHA director and the workplace retaliation investigator.

Monitoring Sources

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- Mandated Activities Report for Consultation (MARC)
- State Indicators Report (SIR)
- SOAR (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- OIS Reports (Abatement Tracking, Fatality/Catastrophe, Inspection Summary, Open Inspection, and Scan Summary)
- Quarterly monitoring meetings between OSHA and the State Plan
- Case file reviews (enforcement and whistleblower protection program)

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers below and above the national average. This range of numbers is also known as the FRL range or the acceptable range. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

In 2014, VOSHA adopted TED 01-00-019, the directive issued by the OSHA Training Institute (OTI) that prescribes OSHA's policies and procedures for training compliance officers.

All of the CSHOs who began working for VOSHA before FY 2014 have completed the mandatory training track for compliance personnel as prescribed by the OTI directive. VOSHA is also ensuring that these CSHOs complete the technical courses that are required once the initial training requirements have all been completed.¹ In FY 2016 and FY 2017, all of VOSHA's senior CSHOs completed at least one technical course, and VOSHA intends to continue this practice each year.

At the end of FY 2017, VOSHA had three CSHOs on board who were relatively new and still in the process of completing the eight-course training program for new compliance officers. One of the new CSHOs completed seven of the eight required training courses within the three-year timeframe prescribed by OSHA's training directive. VOSHA has enrolled this CSHO in the one course that he still needs to complete – Course #1310, Investigative Interviewing Techniques– which will be offered by OTI in June 2018 in Montpelier, Vermont. The remaining two CSHOs who are relatively new are on schedule for completing the mandatory track in a timely manner: the CSHO who was hired in November 2015 has completed six of the eight required courses, and the newest CSHO, who was hired in August 2016, has already completed five of the mandatory courses. A complete listing of training completed by all CSHOs in FY 2017 is included in the VOSHA SOAR (Appendix E).

b) OSHA Information System

From discussions with the managers, it appeared that they understand the usefulness of running OIS reports to monitor case files and program activity, but they acknowledged that in FY 2017, they were not running and reviewing these reports on a regular basis.

In the State Internal Evaluation Program (SIEP), which is attached to the SOAR, VOSHA discussed the fact that it had a sizeable number of uncontested violations for which abatement was not achieved within the required time period. To help address this problem, VOSHA is now running the OIS Abatement Tracking and Open Inspection Reports on a weekly basis to maintain awareness of the violations that have one or more outstanding abatements.

¹ The directive, TED 01-00-019, provides a two-phase approach to CSHO training. In Phase 1, each CSHO will be required to complete a minimum of eight initial courses offered by OTI during the first three years of his or her career as a CSHO. The order and sequence of these courses is prescribed in the directive. In Phase 2, each CSHO will be required to complete a minimum of six additional technical courses through Year 8 of his or her career. Beginning with Year 9, each CSHO must complete a minimum of one technical course every three years.

Although VOSHA has indicated that it is now running and reviewing OIS reports more frequently to monitor program activity, OSHA is making the observation below to ensure that the State Plan continues to follow through in this regard.

Observation FY 2017-OB-01: VOSHA was not using OIS reports to ensure proper monitoring of enforcement activities, as acknowledged by the State Plan's managers.

Federal Monitoring Plan FY 2017-OB-01: On a quarterly basis, OSHA will review OIS reports and discuss them with the State Plan to ensure proper monitoring of enforcement activities.

Status FY 2017-OB-01: This observation is new.

c) State Internal Evaluation Program Report

As noted earlier, the one and only finding in VOSHA's FY 2016 FAME Report pertained to the State Plan closing cases without adequate documentation of abatement. Thus, VOSHA identified abatement documentation as an area that should be evaluated in order to prevent this finding from reoccurring. VOSHA also recognized that it had a problem with not only tracking, but also pursuing open abatements.

As a means of evaluating these two issues under the SIEP, VOSHA randomly selected a handful of inspection case files for review. The State Plan also examined its own practices and reviewed OIS Abatement Tracking and Open Inspection Reports. Based on these analyses, VOSHA identified some procedural flaws and developed corrective measures to address these issues.

For example, VOSHA determined that in many instances, staff no longer attempted to obtain abatement from the employer once the case was in some phase of the debt collection process.² Additionally, the State Plan was not following the procedures in Chapter 7 of the VOSHA Field Operations Manual (FOM) to close abatements in cases where the employer had left the site of the inspection and could no longer be contacted.

Based on the SIEP, VOSHA is now pursuing abatement in cases that are in debt collection and is following the procedures in the VOSHA FOM for closing abatements in cases where the employer could no longer be contacted. The State Plan has also indicated that it is reviewing the Abatement Tracking and Open Inspection Reports on a weekly basis, rather than occasionally.

Finding FY 2016-01: In 32 cases that were reviewed for abatement, 12 (37.5 percent) were closed without having adequate documentation of abatement completion.

Recommendation FY 2016-01: Follow the procedures in Chapter 7 of the VOSHA FOM that pertain to abatement verification and documentation.

Status FY 2016-01: This finding is complete.

The Enforcement section of this report contains more information on VOSHA's abatement

² In this report, cases in debt collection include those that have had a demand letter sent to the employer when the debt has become delinquent. Cases in which the employer is on a payment schedule, as well as those that have been referred to the attorney for further action, are also considered to be in the process of debt collection.

policies and procedures.

d) Staffing

As of September 30, 2017, VOSHA's staff consists of two first-line supervisors, one workplace retaliation investigator, an administrative support staff member, four safety CSHOs, and two health CSHOs. As previously stated, in February 2017, a health CSHO left the program. This position will remain vacant for the foreseeable future because the State Plan is concerned that at its current level of funding, it cannot support the position. A safety CSHO also left the program in July 2017; however, VOSHA filled this position in FY 2018. With some assistance from the compliance supervisor and a few CSHOs, the VOSHA director conducts most of the duties related to compliance assistance.

2. ENFORCEMENT

a) Complaints

SAMM #1 calculates the average number of days it takes the program to initiate complaint inspections. The negotiated FRL for this measure is five days. VOSHA's FY 2017 average of 2.79 days was a bit higher than its FY 2016 average of 2.14 days, but the State Plan still met the FRL in both years.

SAMM #2 calculates the average number of days to initiate investigations of complaints that have no related inspection (non-formal complaints). The negotiated FRL is one day. VOSHA's averages in FY 2016 and FY 2017 were only slightly outside the FRL at 1.12 days and 1.05 days, respectively; therefore, VOSHA's performance on this SAMM does not warrant monitoring.

In SAMM #3, the percent of imminent danger complaints and referrals responded to within one day is calculated. For this SAMM, the FRL of 100 percent is fixed for all State Plans. In FY 2016 and in FY 2017, VOSHA met the FRL. Over the past two fiscal years, VOSHA's result for SAMM #4, the number of denials where entry not obtained, has met the FRL of zero, which is also fixed for all State Plans.

During the case file review, OSHA did not identify any major concerns with VOSHA's handling of complaints. However, a few of the 14 complaint cases reviewed were missing VOSHA's letter to the complainant. OSHA suggests that for all complaint inspections, VOSHA follow Chapter 9 of the VOSHA FOM, which discusses the procedures for notifying complainants of the results of an inspection.

b) Fatalities

VOSHA inspected five work-related fatalities in FY 2016, two of which involved flaggers. Thus, VOSHA has implemented a Local Emphasis Program (LEP) for work zones, which means that any time a compliance officer observes a work zone, he or she will open a programmed

planned inspection at the site. In FY 2017, VOSHA also investigated five work-related fatalities; three of the five fatalities were struck-by incidents, one was the result of a fall, and one was due to electrocution.

In early 2017, VOSHA purchased and installed dashboard cameras on all of its vehicles. Compliance officers use these cameras to photograph and document violations at various worksites, including work zones.

In FY 2017, VOSHA met the FRL of 100 percent for SAMM #10, which calculates the percent of work-related fatalities responded to in one workday. This is an improvement over the 80 percent for this SAMM in FY 2016.

c) Targeting and Programmed Inspections

Over the past two fiscal years, VOSHA has met the annual performance goal for inspections. In both years, the program also met the FRL for SAMM #7, planned versus actual inspections. The FRL for this SAMM is based on a number negotiated by OSHA and the State Plan through the grant application. For both fiscal years, the FRL range was from 216.60 to 239.40 for safety inspections and from 68.40 to 75.60 inspections. VOSHA conducted 281 safety inspections in FY 2016 and 284 safety inspections in FY 2017. For health inspections, the State Plan conducted 111 in FY 2016 versus 92 in FY 2017.

The loss of two CSHOs in FY 2017 seems to have impacted the State Plan's inspection total for that fiscal year. VOSHA conducted a total of 376 inspections in FY 2017, which is less than the 392 inspections conducted by the program in FY 2016. Despite the loss of the two CSHOs, VOSHA still managed to achieve 125 percent of the goal of 300 inspections, which is noteworthy.

Each year, VOSHA establishes goals for inspections in construction and general industry. According to the OIS Inspection Summary Report that was run January 12, 2018, VOSHA met the FY 2017 goals in each of these two broad categories. The projected number of construction inspections was 180, but the State Plan conducted 187 construction inspections. For general industry, the projected number of inspections was 120, and VOSHA conducted 190 inspections.

VOSHA schedules programmed inspections in general industry by obtaining a list of high-hazard worksites order from OSHA's Office of Statistical Analysis and schedules programmed inspections in construction using OSHA's Construction Inspection Targeting Application (C-Targeting Application).³ VOSHA also conducts programmed inspections at construction sites that are too small to be captured by the C-Targeting Application. VOSHA becomes aware of activity at these sites through media reports, travels throughout the state, and word-of-mouth,

³ This list follows the parameters outlined in OSHA's directive, CPL 02-00-025 (https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1594). Each year, OSHA updates the high-hazard safety and health industry lists with new Bureau of Labor Statistics and OIS data.

etc.⁴ These inspections of smaller construction sites are covered under VOSHA's Emphasis Programs on residential construction and falls.

While VOSHA has had LEPs in falls, trenching and excavation, and residential construction for many years, the State Plan recently developed a new LEP for dentists and has also introduced an LEP for work zones. In most cases, VOSHA adopts the policies and procedures in OSHA's National Emphasis Programs (NEPs) identically. For inspections under NEPs, VOSHA uses OSHA's ListGen webpage to obtain establishment targeting lists. In FY 2017, VOSHA used OSHA's ListGen program to generate inspection targeting lists under NEPs for dentists and amputations.

The OIS Inspection Summary Report shows that in FY 2017, VOSHA's percentage of programmed inspections was a bit higher than in FY 2016. Overall, the numbers and percentages of programmed and unprogrammed inspections have not changed significantly from FY 2016 to FY 2017. In FY 2016, 212 (54 percent) of the inspections conducted were programmed and 178 (46 percent) were unprogrammed. In FY 2017, VOSHA conducted 219 (58 percent) programmed inspections and 158 (42 percent) unprogrammed inspections.

In FY 2017, VOSHA conducted 20 programmed inspections in state and local government workplaces compared to nine in the previous year based on OIS Inspection Summary Reports. VOSHA randomly selected the workplaces that were inspected in the local government from a list of all cities and town in the state. Any local government site that has had an inspection within the last five years is exempt from an inspection. In FY 2017, VOSHA also targeted work zones in state agencies; using a list of all transportation districts in the state, the State Plan randomly selected four work zones for inspections.

OSHA uses two SAMMs, SAMM #5 and SAMM #9, to analyze State Plans' targeting programs. SAMM #9 calculates the program's in-compliance rates (i.e., the percentage of inspections that have been closed with no violations). High in-compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations. VOSHA performed satisfactorily on SAMM #9 in FY 2016 and in FY 2017. In FY 2016, the FRL range for the percent of safety inspections in compliance was from 23.08 percent to 34.62 percent; the FRL range for the percent of health inspections in compliance was from 28.54 percent to 42.82 percent. VOSHA had a 26.87 percent in-compliance rate for safety inspections and a 37.86 percent in-compliance rate for health inspections. For FY 2017, the FRL range was from 23.62 percent to 35.44 percent for safety inspections; the FRL range for health inspections in compliance was from 28.62 percent to 42.94 percent. VOSHA had a 24.16 percent in-compliance rate for safety inspections and a 32.50 percent in-compliance rate for health inspections in FY 2017.

⁴ The C-Targeting Application uses F.W. Dodge reports on construction projects to produce monthly inspection lists which are posted on a website available to participating State Plans upon request. This system uses a computer-based methodology to select construction projects for inspection on a neutral basis when they are 30-60 percent complete. Selected sites represent a broad range of construction projects. However, the Dodge data does not include projects valued under \$50,000; therefore, supplementing the C-Targeting list, as VOSHA does, is a sound practice.

Next, SAMM #5 calculates the average number of serious, willful, repeat, or unclassified (SWRU) violations per not-in-compliance (NIC) inspection. Falling below the acceptable range for SWRU violations may also indicate that the State Plan is not targeting the most hazardous worksites. VOSHA has performed satisfactorily for SAMM #5 for the past two years. In FY 2016, the acceptable range was from 1.50 to 2.24; VOSHA had an average of 1.62 SWRU violations per NIC inspection. In FY 2017, the acceptable range was from 1.46 to 2.20; the State Plan had an average of 1.59 SWRU violations per NIC inspection. Thus, the State Plan's results on SAMMs #5 and #9 indicate that the program is effectively targeting the most hazardous worksites for inspections.

Data from the FY 2016 and FY 2017 SIRs also show that VOSHA is targeting the most hazardous sites. VOSHA's percentages in FY 2017 met the FRL for both safety and health in SIR 2D, percent of NIC private sector programmed inspections with SWRU violations as issued, compared to FY 2016, when the State Plan only met the safety FRL. The FRL for this metric is the national average (i.e., the average of all State Plan and federal percentages). In FY 2016, the FRL for safety inspections was 85.23 percent, and the FRL for health inspections was 73.41 percent. VOSHA had percentages of 89.63 and 66.67 for safety and health, respectively. For FY 2017, the FRL for safety inspections was 85.22 percent, and the FRL for health inspections was 76.24 percent. VOSHA had percentages of 92.09 and 76.92 for safety and health, respectively. Meeting the FRL for this metric indicates that VOSHA is conducting a high percentage of programmed inspections at sites that are prone to having SWRU violations.

d) Citations and Penalties

In addition to performing satisfactorily on the targeting metrics discussed above, VOSHA also has a strong enforcement presence according to SAMM #17 data. Specifically, this SAMM calculates the percent of total enforcement presence as the total number of inspections divided by the total number of establishments. Total establishments do not include state and local government establishments or establishments in low-hazard private sector industries. VOSHA's percent for this measure was much higher than the FRL range in both FY 2016 and FY 2017. The range for both fiscal years was from 0.95 percent to 1.58 percent, and VOSHA had a total enforcement presence of 2.30 percent in FY 2016 and 2.20 percent in FY 2017.

Unlike the State Plan's strong performance on SAMM #17, VOSHA has had a long history of not meeting the FRL for SAMM #11, average lapse time, for health cases. In FY 2015, VOSHA's average lapse time for health cases began to show signs of trending downward; the State Plan's average of 77.33 days decreased by 17 percent from the FY 2014 average of 84.91 days. In FY 2016, VOSHA's average of 70.77 days was barely more than two percentage points outside the FRL of +/- 20 percent of 57.28 days. Therefore, in the FY 2016 Follow-up FAME Report, OSHA converted the finding for the high lapse time in health cases to an observation because it appeared that VOSHA's corrective action of counseling CSHOs on lapse time and case file management had been effective.

In FY 2017, VOSHA's average lapse time of 56.27 days for health cases decreased to the point where it was well within the FRL range of +/- 20 percent of 56.03 days. Therefore, OSHA no longer needs to monitor the observation.

Observation FY 2016-OB-02: In SAMM #11, VOSHA’s average lapse time of 70.77 days for health inspections is outside the FRL of +/-20 percent of 57.28 days.

Federal Monitoring Plan FY 2016-OB-02: OSHA will monitor SAMM #11 on a quarterly basis to ensure that the State Plan meets the FRL.

Status FY 2016-OB-02: This observation is closed.

In terms of safety cases, the State Plan’s average lapse time was within the acceptable range in both FY 2016 and FY 2017. In 2016, the acceptable range was from 36.13 days to 54.91 days, and VOSHA’s average lapse time for safety inspections was 39.93 days. For FY 2017, the acceptable range was from 36.23 days to 54.35 days. The State Plan’s average lapse time for safety inspections this fiscal year was 36.36 days.

A few years ago, OSHA identified a significant number of cases that did not have enough evidence to support the violations that were cited. Since the current managers came on board in July 2013, this number has steadily declined. For example, of the 47 cases that that OSHA reviewed during the on-site evaluation that were NIC, there was only a handful in which photos, interview notes, and/or field notes were missing or scarce.

However, 19 (40 percent) of the 47 NIC cases were missing documentation that the CSHO reviewed the employer’s OSHA 300 Logs. Chapter 3 of the VOSHA FOM states that “At the start of each inspection, the CSHO shall review the employer’s injury and illness records for five prior calendar years” The VOSHA FOM does not state that copies of the OSHA 300 Logs must always be included in the case file, but if the log can be used to support violations, then a copy should be included in the case file, as should any other type of documentation of violations. According to Chapter 5 of the VOSHA FOM, “All necessary information relative to documentation of violations shall be obtained during the inspection (including but not limited to notes, audio/videotapes, photographs, employer and employee interviews, and employer maintained records).”

Therefore, if the CSHO determines that the information contained in the OSHA 300 Log does not help support violations, then there is no need to keep a copy in the case file, but VOSHA should include documentation (e.g., a checklist) in the case file that the log was reviewed.

Observation FY 2017-OB-02: In 19 (47 percent) of the case files reviewed that were NIC, there was no documentation that the CSHO had either requested or reviewed the OSHA 300 Log.

Federal Monitoring Plan FY 2017-OB-02: During quarterly meetings, OSHA will assess the measures taken by VOSHA to ensure that the case file contains documentation that the CSHO requested and reviewed the OSHA 300 Log.

Status FY 2017-OB-02: This observation is new.

As discussed previously, metrics in the SAMM Report and SIR indicate that VOSHA is inspecting sites that are the most hazardous. However, a metric in the OIS Inspection Summary Report—average violations per initial inspection—may indicate that the CSHOs are not citing all apparent violations at these hazardous sites. The table below shows that VOSHA marked a bit below all State Plans and OSHA in FY 2016 and FY 2017 on this metric.

FY 2016 – FY 2017 Average Violations per Initial Inspection Source: OIS Inspection Summary Report (January 12, 2018)			
	VOSHA	All State Plans	OSHA
FY 2016	2.11	3.27	2.62
FY 2017	2.07	3.14	2.37

Additionally, of the 47 inspections reviewed during the on-site evaluation that were NIC, it appears that in eight cases (17 percent), the CSHO did not cite all apparent violations during the initial inspection. Although this number is not substantial, these cases, coupled with VOSHA’s average on the OIS Inspection Summary Report metric, suggest that managers should mentor CSHOs to ensure that they cite all apparent violations during inspections.

In four of the 47 NIC cases that were reviewed during the on-site, OSHA determined that one or more violations were classified as other-than-serious when they should have been classified as serious. Also, in a handful of cases, OSHA determined that the CSHO did not follow the VOSHA FOM’s guidance for assessing the gravity of violations related to fall hazards; specifically, the CSHO’s assessment of the severity and/or probability of the illness that could occur from the alleged violation appeared to be too low.

OSHA did not identify enough evidence to indicate that the State Plan has a strong tendency to improperly classify serious violations as other-than-serious and vice versa or improperly assess the gravity of alleged violations. Nonetheless, VOSHA should be mindful of the factors to be used in determining whether a violation is to be classified as serious (VOSHA FOM, Chapter 4) and the criteria for assessing the severity and probability of potential injuries or illnesses (VOSHA FOM, Chapter 6).

In FY 2017, VOSHA’s total number of violations cited decreased by only one violation from FY 2016. However, VOSHA cited 44 percent more safety violations in FY 2017 than in FY 2016 and 18 percent fewer health violations in FY 2017 compared to FY 2016. This decrease in health violations is most likely due to the loss of one of the health CSHOs, which occurred in February 2017. As noted earlier, VOSHA is unlikely to fill this position in the near future.

Next, VOSHA adopted OSHA’s Interim Final Rule on Maximum Penalty Increases in a form identical to the federal program on July 1, 2017.⁵ In this statute, VOSHA also included an annual adjustment to civil penalties for inflation that is identical to the federal rule.

Although VOSHA formally adopted OSHA’s maximum penalty rule in July 2017, the State Plan delayed implementation of this rule until October 2017 to allow more time for outreach to employers and stakeholders. Additional time was also needed to load the new penalties into OIS. Therefore, up until the beginning of FY 2018, VOSHA’s penalties were set by the state’s penalty statute (21 V.S.A. § 210) that had been in place for many years. For example, employers who were cited for willful or repeated violations were assessed a civil penalty of \$5,000 to not

⁵ The following is a link to VOSHA’s current penalty statute:
<https://legislature.vermont.gov/statutes/section/21/003/00210>

more than \$70,000 for each violation; for serious and other-than-serious violations, the assessments were up to \$7,000 for each violation. For these reasons, VOSHA did not meet the FRL for SAMM #8, the average current penalty per serious violation in the private sector, in either FY 2016 or FY 2017. In FY 2016, the FRL was +/- 25 percent of \$2,279.03, which equals a range of \$1,709.27 to \$2,848.79; VOSHA had an average serious penalty of \$1,200.30. In FY 2017, the FRL was +/- 25 percent of \$2,516.80, which equals a range of \$1,887.60 to \$3,146.00; VOSHA had an average serious penalty of \$1,692.35.

In FY 2018 and in future years, VOSHA's adoption of OSHA's new maximum penalty amounts, along with its revised penalty structure, should result in VOSHA's average current penalty per serious violation aligning more closely with the FRL for SAMM #8.⁶

e) Abatement

In the FY 2015 Comprehensive FAME Report, OSHA made a finding that VOSHA was closing too many case files without adequate verification of abatement. In the FY 2016 Follow-up Fame Report, this finding was continued, pending the results of the FY 2017 on-site case review. As a corrective measure, VOSHA's managers have been reviewing all cases to ensure that they contained adequate abatement before closing inspections.

During the most recent on-site review, OSHA determined that seven (15 percent) of the 46 cases that were reviewed for abatement were closed without adequate documentation of abatement. None of the seven cases that were closed without adequate documentation of abatement were related to fatalities. In FY 2015, 37.5 percent of the cases reviewed were closed without adequate documentation of abatement. Compared to the FY 2015 percentage of 37.5, VOSHA's FY 2017 percentage is much lower but represents only five fewer cases; in FY 2015, OSHA identified 12 of 32 cases that were closed without adequate verification of abatement.

Nonetheless, Finding FY 2016-01 is closed. The State Plan's policy of reviewing case files for abatement verification before closing cases appears to be working, and VOSHA has recently taken additional measures, such as using the Certificate of Corrective Action Worksheet, to shore up this issue. During the on-site review, OSHA suggested that VOSHA use this worksheet, which is available in OIS.⁷

The OIS Abatement Report showed 20 cases having a total of 36 uncontested violations that were unabated more than 30 days after the abatement due date. As noted earlier, VOSHA was

⁶ For several years, VOSHA's penalty structure (i.e., penalty adjustment factors) had been based on OSHA's FOM, which was issued in September 1994. In May 2016, VOSHA adopted OSHA's latest penalty structure, which was contained in the OSHA FOM that was issued on October 1, 2015.

⁷ The VOSHA FOM (Chapter 7) states that "employers must certify that abatement is complete for each cited violation." The Certification of Corrective Action Worksheet includes all the elements required by the VOSHA FOM, such as the employer's name and address; the inspection number; the citation and item numbers; a statement that the information submitted is accurate; signature of the employer or employer's authorized representative; the date and method of abatement for each cited violation; and a statement that affected employees and their representatives have been informed of the abatement. This worksheet is included in the citation package that the State Plan sends to the employer.

not attempting to obtain abatement in cases that were in debt collection. Also, the State Plan was not closing abatements in cases where the employer was no longer at the worksite and could no longer be contacted (most of these cases involved inspections at construction sites).

Chapter 7 of the VOSHA FOM, Employer Failure to Submit Required Abatement Certification, states that “For those rare instances where the reminder letter is returned to the Area Office by the post office as undeliverable and telephone contact efforts fail, the Area Director has the discretion to stop further efforts to locate the employer and document in the case file the reason for no abatement certification.”⁸ Once the director or supervisor has decided to pursue this course of action, the open abatement should be closed in OIS.

An OIS Abatement Tracking Report run on February 26, 2018, showed that VOSHA has improved since the previous tracking report that was run in December 2017. For example, the most recent report showed only five cases having a total of 15 uncontested violations that were unabated more than 30 days after the abatement due date.

The fact that VOSHA had several uncontested violations with abatement overdue is a serious concern. However, VOSHA has identified the root causes of this problem and has undertaken appropriate corrective measures; the State Plan is conducting follow-up inspections at some of the sites that have long overdue abatements and is also following the procedures in Chapter 7 of the VOSHA FOM.⁹

Furthermore, the State Plan has successfully whittled down the 20 cases that appeared on the December 2017 tracking report as having one or more violations long overdue for abatement. Therefore, OSHA will continue to monitor VOSHA’s efforts to track and pursue open abatements in all cases, as well as the State Plan’s efforts to follow the procedures in the VOSHA FOM for closing abatements in cases where the employer can no longer be located.

Observation FY 2017-OB-03: An OIS Abatement Tracking Report run on December 7, 2017, showed 20 cases having a total of 36 uncontested violations that were unabated more than 30 days after the abatement due date. Many of these cases were the result of the State Plan not attempting to obtain abatement from the employer once the case was in debt collection. In addition, VOSHA did not follow the procedures in Chapter 7 of the VOSHA FOM to close the open abatement in OIS in cases where the employer did not respond to the citation and could no longer be contacted.

Federal Monitoring Plan FY 2017-OB-03: During quarterly meetings, OSHA will monitor VOSHA’s efforts to track abatement, pursue abatement from employers whose cases are in debt collection, and follow the procedures in Chapter 7 of the VOSHA FOM to close long-overdue abatements in cases where the employer could no longer be located.

⁸ During the onsite case file review, OSHA recommended that the CSHO return to the site to take photographs documenting that the employer is no longer on-site. Following this procedure would enable VOSHA to close the open abatement in the OIS and is in keeping with Chapter 7 of the VOSHA FOM.

⁹ Where the employer has not submitted the required abatement certification or documentation within the time permitted by the regulation, the Area Director has discretion to conduct a follow-up inspection (VOSHA FOM, Chapter 7).

Status FY 2017-OB-03: This observation is new.

f) Worker and Union Involvement

Of the 59 case files reviewed where inspections were conducted, four of the worksites had workers that were represented by labor unions. In FY 2016, VOSHA's percent of 96.68 was outside the FRL of 100 percent, which is fixed for all State Plans for SAMM #13 - percent of initial inspections with worker walk around representation or worker interview. In FY 2017, VOSHA met the FRL for this SAMM.

VOSHA's policies and procedures regarding worker involvement during inspections continue to be acceptable. However, in 10 (17 percent) of the 59 inspections that were reviewed, OSHA did not find documentation of worker interviews in the case file. As noted earlier, Chapter 5 of the VOSHA FOM states that all necessary information related to documentation of violations, such as employer and worker interviews, should be obtained during the inspection. OSHA recommends that the CSHOs document these interviews by placing the notes in the case file.

3. REVIEW PROCEDURES

a) Informal Conferences

VOSHA does not have penalty reduction programs, such as expedited informal settlement agreements. The OIS Inspection Summary Report shows that in FY 2017, 99 percent of the penalty modifications made by VOSHA were through informal settlement agreements. The remaining one percent of penalty modifications was made post-contest. This report also shows that penalties were reduced by an average of 50.9 percent through informal settlement agreements. Looking at all State Plans nationwide, the average was 41.6 percent for the same metric, and OSHA's average was 42.8 percent. VOSHA's percent penalty reduction decreased from 55.5 percent to 50.9 percent between FY 2016 and FY 2017.

In the FY 2016 Follow-up FAME Report, OSHA identified a change with regard to SAMM #12, percent penalty retained, that warranted an observation. In that report, OSHA noted that VOSHA's percent for SAMM #12 had been trending downward over the past couple of years; in FY 2016, the program's percent of 53.03 was outside the FRL range of 59.38 percent to 80.34 percent. In FY 2017, VOSHA's percent of 53.57 was slightly higher than in FY 2016, but it still remained outside the FRL range of 57.32 percent to 77.56 percent.

According to the VOSHA director, CSHOs have been "more heavy-handed" than they should when assessing penalties. Consequently, the managers have had to dismiss some citations because the information in the case file did not support the violation that was cited. The managers are continuing to work with CSHOs so that the penalties that they assess are appropriate for the violations cited.

VOSHA has also granted penalty reductions to some small cities and towns due to the fact that the assessed penalties would have placed a serious strain on their budgets. The director is investigating the extent to which these penalty reductions have impacted VOSHA's penalty

retention percent. In FY 2018, OSHA will continue to monitor VOSHA's performance on this metric.

Observation FY 2017-OB-04 (formerly FY 2016-OB-01): VOSHA's percent penalty retained of 53.57 was outside the FRL of +/- 15 percent of 67.44 percent.

Federal Monitoring Plan FY 2017-OB-04: OSHA will monitor SAMM #12 on a quarterly basis to help ensure that the FRL is met.

Status FY 2017-OB-04: This observation is continued.

During the FY 2017 case file review, OSHA did not identify any trends that VOSHA needed to address in terms of penalty reductions, violations vacated or reclassified, or documentation of changes to penalties; however, OSHA also did not find documentation of penalty changes in a few of the case files.

In 17 (57 percent) of the 30 cases that were reviewed for informal conferences, VOSHA did not enter the date the informal conference was requested on the case activity diary sheet. By recording this information on the diary sheet, VOSHA will align more closely with Chapter 5 of the VOSHA FOM, which states that the diary sheet "will be used to document important events or actions related to the case.... Diary entries...should be dated in chronological order to reflect a timeline of the case development. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event, and the initials of the person making the entry." OSHA recommends that that VOSHA record the date that the employer requested the informal conference on the diary sheet because the employer's request is an "important action related to the case."

b) Formal Review of Citations

The Vermont Occupational Safety and Health Review Board is "an establishment of the executive branch of the Vermont state government created by the VOSHA code, consisting of three members appointed by the governor by and with the advice and consent of the Senate...."¹⁰

OSHA reviewed the statuses of 20 cases that had citations appealed to the review board over the past two fiscal years (14 cases from FY 2016 and six cases from FY 2017). In the vast majority of the cases, 17 of 20, a settlement was reached before a hearing was held. One case is pending a request for review by the Vermont Superior Court; in another, the hearing officer dismissed the citation, and VOSHA is contemplating an appeal; and in the final case, the citation is in contest, and settlement discussions are ongoing.

In most of the cases that were settled prior to having a hearing, the employer agreed to one or more stipulations, such as providing workers with additional safety and health training, using the services of Vermont's OSHA Consultation Project (Project WorkSAFE), or agreeing to specific abatement measures, etc. In three of the 17 cases that settled before a hearing was held, one of the original citations was reclassified.

¹⁰ Vermont Occupational Safety and Health Review Board, *Rules of Procedure*, §2200.2b. The Board.

The attorney who handles VOSHA's contested cases said that the State Plan enters into "stipulated settlements primarily to avoid the costs associated with proceeding to a review board hearing." He also noted that "there are also risks with proceeding to hearing, such as the sudden unavailability of witnesses or witnesses recanting prior statements." If VOSHA's attorney makes an independent determination that the evidence in the case file does not support the citation and that it could not be proven at a hearing, then he requests that the citation be withdrawn.

Of the 20 cases that had citations appealed to the review board, OSHA identified one case in which the notice of contest was not sent to the VOSHA Review Board in a timely manner. In this case, the notice of contest was sent to the review board 14 days after receipt. VOSHA Review Board Rule 2200.31(a) requires the commissioner "to send the original notice of contest to the board within seven days of receipt."

After reviewing these 20 cases, OSHA determined that no action was needed by VOSHA with regard to State Plan defense, quality of decisions, or procedural issues. The VOSHA Review Board's decisions can be obtained in their entirety through the board's website.¹¹

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

a) Standards Adoption

The Vermont Administrative Procedures Act was first adopted in 1968 (Act no. 360 of 1967 adj.) and governs the process by which administrative rules are to be adopted by state agencies. It can be found at Title 3 V.S.A. Chapter 25. Vermont's rulemaking process is lengthy, and Vermont agencies are required to make filings of every new, amended, or repealed rule at least four times during the rulemaking process.¹²

VOSHA responded timely to the standards that had adoption due dates in FY 2016 and FY 2017, but the State Plan did not adopt any of these standards within the six-month timeframe.¹³

¹¹ <http://voshaboard.vermont.gov/decisions/index>

¹² The first filing is the pre-filing with the Interagency Committee on Administrative Rules (ICAR). This begins the rulemaking process. The second filing is the proposed rule with the Office of the Secretary of State. This begins the notice and public comment period. The third filing is the final proposed rule, which is filed with the Office of the Secretary of State and the Legislative Committee on Administrative Rules (LCAR). This signals the end of the notice and public comment period. After the LCAR review, the fourth and last filing is the adopted rule (filed with both the Office of the Secretary of State and LCAR), which marks the beginning of the minimum 15-day period required by statute [3 V.S.A. § 845(d)] for the effective date of the rule. See Vermont's rule on rulemaking; Code of Vermont Rules (CVR) 04-000-001: <https://www.sec.state.vt.us/administrative-rules/rule-on-rulemaking.aspx>.

¹³ 29 Code of Federal Regulations (CFR) 1953.4(b) (3): "When there is a change in the federal program which requires state action, OSHA shall advise the states. This notification shall also contain a date by which states must adopt a corresponding change or submit a statement why a program change is not necessary. This date will generally be six months from the date of notification...."

Standards with Adoption Due Dates in FY 2016 and FY 2017 (Source: State Plan Automated Tracking Application)					
Standard	Federal Register Date	Response Due Date	Date State E-mailed Response	Adoption Due Date	Adoption Date
Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation 1903.2560.2575	1/18/2017	3/18/2017	3/18/2017	7/18/2017	7/1/2017
Final Rule on Occupational Exposure to Beryllium 1910.1915.1926	1/9/2017	3/9/2017	3/6/2017	7/9/2017	Adoption is anticipated in August 2018.
Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) 29 CFR PART-1910	11/18/2016	1/18/2017	1/13/2017	5/18/2017	3/13/2018
Interim Final Rule on Maximum Penalty Increases <i>Standard Number:</i> 1902,1903	7/1/2016	9/1/2016	9/1/2016	1/1/2017	7/1/2017
Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR PART-1902,1904	5/12/2016	7/12/2016	7/12/2016	11/14/2016	9/12/2017
Final Rule for Occupational Exposure to Respirable Crystalline Silica 1910,1915,1926	3/25/2016	5/25/2016	5/25/2016	9/26/2016	6/14/2017

Maximum Penalty Increase and Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation

VOSHA adopted the Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties and OSHA’s Interim Final Rule on Maximum Penalty Increases on July 1, 2017.¹⁴ Because Vermont’s penalties are set forth in state statute, adopting OSHA’s maximum penalties rule was no small undertaking, but the State Plan persevered. To complete adoption of this rule, VOSHA had to seek approval from both houses of the state legislature, as well as the governor. Thus, VOSHA adopted the maximum penalties rule about six months later than the due date of January 1, 2017.

Silica Standard

On March 25, 2016, OSHA published a Federal Register Notice on the Final Rule for Occupational Exposure to Respirable Crystalline Silica. OSHA’s silica standard consists of two separate standards, one for general industry and maritime and one for construction, to tailor

¹⁴ With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016 and again increased penalties according to the consumer price index (CPI) in January of 2017 and in January 2018. As required by law, OSHA will continue to raise maximum penalties each year according to the CPI. State Plans are required to adopt both the catch-up increase and annual increase.

the standards to the circumstances in these sectors. Although VOSHA did not intentionally delay promulgation of the silica standard, the State Plan did not adopt the standard until June 2017, which was about nine months after the September 26, 2017, due date. Similar to OSHA, VOSHA delayed full enforcement of the construction standard until October 23, 2017, and expects to enforce the general industry/maritime standard on June 23, 2018.

Beryllium Standard

On January 9, 2017, OSHA adopted new standards addressing occupational beryllium exposure in general industry, construction, and shipyards. State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by July 9, 2017. However, on June 27, 2017, OSHA published a notice of proposed rulemaking to revoke the ancillary provisions applicable to the construction and shipyard sectors but retain the new PELs. OSHA will not enforce the provisions of the January 9, 2017, construction and shipyard standards that it has proposed to revoke while the current rulemaking is underway.

Given the unusual circumstances of this rulemaking, in which substantive changes have been proposed to a standard within six months following its initial promulgation, several State Plans have delayed promulgation pending completion of the second rulemaking. Although VOSHA was initially uncertain as to whether or not to proceed with rulemaking, the State Plan began the process in early FY 2018 and anticipates adoption by August 2018.

Electronic Reporting Rule

On May 12, 2016, OSHA published the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, effective January 1, 2017. The rule required all affected employers to submit 300A log summaries in OSHA’s Injury Tracking Application by the specified due date of July 1, 2017. This deadline was subsequently pushed back to December 15, 2017.

In its Fall 2017 Regulatory Agenda, OSHA announced that it intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses Final Rule, 81 FR 29624 (May 12, 2016).

State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, by November 14, 2016. However, given OSHA’s intent to issue a proposed rule to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses Final Rule, VOSHA delayed adoption of this rule but eventually completed the process in September 2017, which was about 10 months later than the due date of November 14, 2016.

Walking - Working Surfaces and Personal Protective Equipment Rule

On November 18, 2016, OSHA adopted the Final Rule on Walking -Working Surfaces and Personal Protective Equipment (Fall Protection Systems). State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by May 18, 2017. VOSHA adopted this rule on March 13, 2018.

b) Federal Program Change (FPC) Adoption

The table below provides a summary of the status of VOSHA’s FPC adoptions in FY 2016 and in FY 2017 and is followed by a brief discussion of these adoptions.

FPC Adoptions FY 2016 – FY 2017 Source: State Plan Automated Tracking Application					
Directive	Date	Response Due Date	Date State E-mailed Response	Adopt Identical	Adoption Date
CPL 02-01-058: Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence	1/10/2017	3/10/2017	3/6/2017	YES	3/1/2017
CPL-02-00-160: OSHA Field Operations Manual Directive	8/2/2016	10/1/2016	10/1/2016	NO	10/1/2017
CPL 03-00-020: National Emphasis Program on Shipbreaking	3/7/2016	5/6/2016	5/2/2016	Adoption was not required.	VOSHA did not adopt.
CPL 02-03-007: Whistleblower Investigations Manual	1/28/2016	4/27/2016	4/21/2016	YES	6/1/2016
CSP-02-00-00: Consultation Policies and Procedures Manual Directive	11/19/2015	1/19/2016	1/19/2016	YES	4/1/2016
CPL-02-00-159: Field Operations Manual Directive	10/1/2015	12/1/2015	1/4/2016	YES	5/1/2016
TED-01-00-020: Mandatory Training Program for OSHA Whistleblower Investigators Directive	10/8/2015	12/8/2015	12/7/2015	YES	1/1/2016
CPL-02-03-006: Alternative Dispute Resolution Process for Whistleblower Protection Program Directive	8/18/2015	12/7/2015	1/4/2016	Adoption was not required.	VOSHA did not adopt.

VOSHA was about a month late in terms of responding to OSHA’s FOM Directive (CPL-02-00-159). The State Plan was also about a month late in adopting this directive. As noted earlier, VOSHA had been delaying adoption of OSHA’s FOM Directive (CPL-02-00-160) until adoption of the Maximum Penalties Rule was completed, which was in July 2017. Based on Chapter 6 of the FOM, the State Plan made minor changes to the size of employer used for gravity-based penalty reductions. OSHA reviewed and approved these changes in September 2017. The State Plan was also about a month late in responding to the Alternative Dispute Resolution Process for Whistleblower Protection Program Directive (CPL-02-03-006).

However, overall, VOSHA performs satisfactorily in terms of adopting FPCs in a timely manner. When new FPCs and standards are adopted, VOSHA’s managers provide copies of them to field staff and request that they become familiar with their requirements. In addition, new FPCs and standards are reviewed and discussed during staff meetings.

5. VARIANCES

VOSHA had no variances in FY 2016 or in FY 2017.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

As noted earlier, VOSHA's coverage of state and local government workers is identical to that of private sector workers, including citation issuance and first instance sanctions.

VOSHA conducted 34 inspections in state and local government workplaces in FY 2017, which exceeded the State Plan's goal of 26 inspections. This total was not only greater than the number of state and local government inspections conducted by VOSHA in the previous fiscal year, but it also represents a higher percentage of total inspections in state and local government workplaces than in FY 2016.

In the FY 2016 Follow-up FAME Report, OSHA noted that although VOSHA had exceeded the goal of 26 state and local government inspections, the State Plan did not meet the FRL in SAMM #6, which measures the percent of total inspections in state and local government workplaces. For both FY 2016 and FY 2017, the FRL range for SAMM #6 was from 8.23 percent to 9.10 percent. While VOSHA only had a percentage of 7.65 in FY 2016, the State Plan met the FRL for this SAMM at 9.04 percent in FY 2017.

7. WHISTLEBLOWER PROGRAM

The Vermont Department of Labor operates the VOSHA Whistleblower Protection Program under Title 21 V.S.A. Sec. 231. VOSHA has jurisdiction over health and safety retaliation cases arising from both state and local government and private sector workers in the state of Vermont. The state models its program after OSHA's whistleblower protection program and follows the OSHA Whistleblower Manual for practices and procedures.

In addition to the VOSHA director who oversees the whistleblower protection program and the workplace retaliation investigator, two state attorneys provide legal guidance on workplace retaliation issues and handle all appeals.

Based on the case file review and discussions with the VOSHA director and the workplace retaliation investigator, the VOSHA Whistleblower Protection Program continues to be strong on many fronts. The physical case files were well organized, and the investigator closely followed the OSHA Whistleblower Manual's table of contents structure, which greatly facilitated the review. All of the case files reviewed contained adequate documentation to support the determinations made for each respective case. Merit settlement, litigation, dismissal, and withdrawal rates were also appropriate. OSHA identified no issues with VOSHA's Whistleblower Protection Program during the case file review.

SAMM #14 measures the percent of 11(c) investigations completed within 90 days. The FRL of 100 percent is fixed for all State Plans. In FY 2017, VOSHA's whistleblower protection program completed 17.8 percent of its 11(c) investigations within 90 days. In FY 2016, the program completed 14 percent of its complaints within 90 days. OSHA is not concerned with VOSHA's performance on this measure; for VOSHA, the 90-day completion rate is difficult to achieve, given the complexity of cases and the limited resources.

For SAMM #15, percent of 11(c) complaints that are meritorious, the FRL is based on a three-year national average. The FRL range is from 20 percent to 30 percent. In FY 2017, VOSHA determined 28 percent of its cases to be meritorious, whereas in FY 2016 when the FRL range was from 19.2 percent to 28.8 percent, the program determined 14 percent its cases to be meritorious. It is noteworthy that the percent of complaints found to have merit increased dramatically from FY 2014, when it was only 3.0 percent. This increase is likely due to improved recordkeeping in WebIMIS, appointment of a full-time investigator, and improved procedures for settling cases.

SAMM #16 measures the average number of calendar days to complete an investigation. The FRL of 90 days is fixed for all State Plans. In FY 2017, investigations took an average of 139 days per case, and in FY 2016, investigations took an average of 285 days per case. OSHA is not concerned with VOSHA's performance on this measure as VOSHA continues to improve (i.e., decrease) the average length of its investigations.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

VOSHA had no CASPAs in FY 2016 or in FY 2017.

9. VOLUNTARY COMPLIANCE PROGRAM

As stated earlier, in July 2013, the CAS became the VOSHA director. Since then, the VOSHA director has been conducting most of the compliance assistance activities, with some of the duties shared by the compliance supervisor and a few CSHOs.¹⁵

When the VOSHA director was the CAS, he was in charge of running the GMVPP and continued to do so even after becoming the director. However, in FY 2017, the director allocated a large portion of the responsibility for running the GMVPP to a CSHO who has expertise in both safety and health.

During the on-site review, OSHA reviewed five files related to the GMVPP and two Alliance files; no issues were identified during the review of these files, and OSHA verified that VOSHA's written policies and procedures for the voluntary and cooperative programs were

¹⁵ After the CAS became the VOSHA director, the State Plan rescinded the full-time equivalent position that had been occupied by the CAS. In FY 2006, VOSHA and several other State Plans accepted specific funding from OSHA for a CAS. In order to maintain this direct funding, VOSHA must continue to have a CAS. However, the CAS duties may be shared by more than one staff member.

adequate.

In FY 2016 and FY 2017, VOSHA maintained the active participation of five sites in the GMVPP. Three of the five sites were successfully re-approved, and an initial approval was conducted at a new worksite in FY 2017. In FY 2016 and in FY 2017, VOSHA maintained two Alliances.

The VOSHA director maintains outreach activity data in a handwritten log. Although not a requirement, OSHA recommends that VOSHA use the OIS Compliance Assistance Module to track outreach activities, rather than the handwritten log. Using OIS will enhance VOSHA's ability to maintain and report accurate totals of outreach participants.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

In each of the past two fiscal years, VOSHA's state and local government consultation program projected a total of 20 state and local government visits. In FY 2016 and in FY 2017, the program exceeded this goal by conducting 25 visits in each of those years.

The MARC which was run by OSHA on January 25, 2018, shows that in FY 2016 and in FY 2017, VOSHA corrected 100 percent of all hazards in a timely manner either on-site or within the original timeframe (MARC #4A).¹⁶ As discussed in previous FAME Reports, VOSHA has a long track record of meeting the 100 percent reference/standard for MARC #4A.

The MARC also shows that in FY 2017, VOSHA corrected 96.72 percent of serious hazards within the original timeframe or onsite, compared to 95.70 percent in FY 2016 (MARC #4D).

The OIS End-of-Year Consultation Metrics Report (January 25, 2018) shows that VOSHA removed 3,816 workers from risk.¹⁷ The average number of serious hazards identified per initial visit was 13.45, which compares favorably to the national average of 4.56. Of the total number of serious hazards identified in Vermont's state and local government worksites in FY 2017, 86 (29 percent) were in state and local government establishments with 25 workers or less, and the remaining 210 hazards (71 percent) were in state and local government establishments of 26 -100 workers. OSHA has not identified any areas of concern with regard to VOSHA's 23(g) on-site consultation program.

¹⁶ Data in MARC #4A is based on closed cases only.

¹⁷ There is a discrepancy between the data in MARC #4 and the End-of-Year Consultation Report for the total number of serious hazards. Whereas MARC #4 only captures the hazards that were identified in visits that have been finalized, the End-of-Year Consultation Report includes the hazards that were identified in visits that are in draft as well as those that have been finalized. (Source: OIS Purpose and Description of Reports)

Appendix A – New and Continued Findings and Recommendations
FY 2017 VOSHA Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-# or FY 2016-OB-#

Appendix B – Observations Subject to New and Continued Monitoring

FY 2017 VOSHA Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-01		VOSHA did not use OIS reports to ensure proper monitoring of enforcement activities, as acknowledged by the State Plan’s managers.	On a quarterly basis, OSHA will review OIS reports and discuss them with the State Plan to ensure proper monitoring of enforcement activities.	New
FY 2017-OB-02		In 19 (47 percent) of the case files reviewed that were NIC, there was no documentation that the CSHO had either requested or reviewed the OSHA 300 Log.	During quarterly meetings, OSHA will assess the measures taken by VOSHA to ensure that the case file contains documentation that the CSHO requested and reviewed the OSHA 300 Log.	New
FY 2017-OB-03		An OIS Abatement Tracking Report run on December 7, 2017, showed 20 cases having a total of 36 uncontested violations that were unabated more than 30 days after the abatement due date. Many of these cases were the result of the State Plan not attempting to obtain abatement from the employer once the case was in debt collection. In addition, VOSHA did not follow the procedures in Chapter 7 of the VOSHA FOM to close the open abatement in OIS in cases where the employer did not respond to the citation and could no longer be contacted.	During quarterly meetings, OSHA will monitor VOHA’s efforts to track abatement, pursue abatement from employers whose cases are in debt collection, and follow the procedures in Chapter 7 of the VOSHA FOM to close long-overdue abatements in cases where the employer could no longer be located.	New
FY 2017-OB-04	FY 2016-OB-01	For SAMM #12, VOSHA’s percent penalty retained of 53.57 was outside the FRL of +/- 15 percent of 67.44 percent.	OSHA will monitor SAMM #12 on a quarterly basis to help ensure that the State Plan meets the FRL.	Continued
	FY 2016-OB-02	In SAMM #11, VOSHA’s average lapse time of 70.77 days for health inspections is outside the further review level average of +/- 20 percent of 57.28 days.		Closed

Appendix C - Status of FY 2016 Findings and Recommendations

FY 2017 VOSHA Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2016-01	In 32 cases that were reviewed for abatement, 12 (37.5 percent) were closed without having adequate documentation of abatement completion.	Follow the procedures in Chapter 7 of the VOSHA FOM that pertain to abatement verification and documentation.	In all cases where citations are issued, the manager now indicates on the diary sheet that adequate documentation of abatement is present in the case file.	September 30, 2017	Completed

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 VOSHA Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont – VOSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.79	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.01	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.05	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.09	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.59	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 VOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont – VOSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
		Other: 0.47	+/- 20% of Other: 0.99	The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
6	Percent of total inspections in state and local government workplaces	9.04%	+/- 5% of 8.67%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 8.23% to 9.10%.
7	Planned v. actual inspections – safety/health	S: 284	+/- 5% of S: 228	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 216.60 to 239.40 for safety and from 68.40 to 75.60 for health.
		H: 92	+/- 5% of H: 72	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,692.35	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 VOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont – VOSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	a. Average current serious penalty in private sector (1-25 workers)	\$1,400.38	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,993.16	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,389.92	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,611.11	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
9	Percent in compliance	S: 24.16%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from
		H: 32.50%	+/- 20% of H: 35.78%	

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 VOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont – VOSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 36.36	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 56.27	+/- 20% of H: 56.03	
12	Percent penalty retained	53.57%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	17%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	28%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.

Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 VOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

State Plan: Vermont – VOSHA			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
16	Average number of calendar days to complete an 11(c) investigation	139	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	2.20%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

**STATE OF VERMONT
STATE OSHA ANNUAL REPORT
(SOAR)**

October 1, 2016 through September 30, 2017



Prepared By:

**State of Vermont
Department of Labor**

**Division of Workers' Compensation and Safety
VOSHA**

Appendix E - FY 2017 State OSHA Annual Report (SOAR)

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Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Introduction

The Vermont Occupational Safety and Health State Administration (VOSHA) submits this State OSHA Annual Report (SOAR) to the Federal Occupational Safety and Health Administration (OSHA) for evaluation of the Vermont State program. The SOAR covers fiscal year (FY) 2017 (October 1, 2016 through September 30, 2017).

This SOAR contains the following sections:

- State Results Summary Chart
- Report on Strategic Plan Accomplishment
- State Internal Evaluation Program (SIEP), a lookback at case file opening to issue times and ways of improvement

The Vermont Department of Labor, Division of Worker's Compensation, administers VOSHA, and Project WorkSAFE, the state's OSHA 21 (d) consultation program.

In FY 2017, signs that VOSHA would be experiencing budgetary problems began to appear, and were ominous. For example, when two compliance safety and health officers (CSHO) left the program, VOSHA had no choice but to alert the Region that at least one of these positions would remain vacant indefinitely. This unfortunate situation has arisen mainly because VOSHA's federal grant funding has remained constant over the past few years and has not kept up with the program's ever increasing operating expenses. In addition, to make the budget balance for FY 2018, VOSHA will not be able to fill the other vacant CSHO position until the end of the first quarter of FY 2018.

Despite these budgetary issues, VOSHA was able to perform at the expected levels due to an outstanding effort by the existing staff. At the Occupational Safety and Health State Plan Association (OSHSPA) meeting in the spring of 2017, OSHA warned the State Plans of the possibility that in FY 2019, the federal match may go below the current level; if this happens, VOSHA could face a critical point at which our service to working Vermonters could become affected.

The following is VOSHA's staffing at the beginning of FY 2018:

- Director of Workers Compensation and Safety; 1
- Program Manager; 1
- Compliance Supervisor; 1
- Administrative Assistant; 1
- Safety Compliance Officers; 3
- Health Compliance Officers; 2
- Health/Safety Compliance Officer; 1
- 11(c) Whistleblower Investigator; 1
- Total: 11 *NOTE - the Director of Workers Compensation and Safety is not a dedicated VOSHA full-time equivalent (FTE).

The consultation and enforcement programs continue to operate with no structural changes. Although the consultation and enforcement programs do not share personnel and maintain their

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own offices in different locations, the two programs share common goals to ensure workplace safety and health in the State of Vermont. Therefore, the VOSHA and Project WorkSAFE managers continue to work closely together to develop strategies for achieving these goals.

In FY 2016 and FY 2017, VOSHA ensured that the CSHOs on board were enrolled in the courses required by OSHA's training directive (TED 01-00-019). As mentioned previously, VOSHA intends to fill the vacant safety CSHO position in the first quarter of FY 2018, and will also ensure that the new hire will complete the basic training track for CSHOs, as prescribed in OSHA's current training directive. VOSHA continues to ensure that training is provided to CSHOs from both the OSHA Training Institute (OTI) as well as other training sources. All of VOSHA CSHO's attended training in FY 2017. The following staff attended OTI and other courses in FY 2016 and in FY 2017:

- VOSHA Compliance Program Manager
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher.
- VOSHA Compliance Supervisor
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
- Senior Industrial Hygienist
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
- 11(c) Whistleblower Investigator
 - Course 1230- Accident Investigation
 - Course 2450- Evaluation of Safety and Health Management Systems

 - L0954 NIMS ICS All Hazards, Safety Officer Course
- Senior Safety Compliance Officer
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
- Industrial Hygiene/Safety Compliance Officer
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
 - Course 1230 – Accident Investigation 05/25/2017
 - Course 2450 – Evaluation of Safety and Health Management Systems 06/08/2017

 - Workplace Safety Solutions private training: Walking/Working Surfaces & Fall Protection
- Senior Industrial Hygienist;
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher

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- * Safety compliance Officer;
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
 - Course 1230- Accident Investigation
 - Course 2450- Evaluation of Safety and Health Management Systems

 - Webinar 0102- Aerial Lifts in Construction Industry
 - Webinars 0117 – New Walking Working Surfaces and PPE Fall Protection Rule
 - Webcast – Providing Powered Industrial Truck Training

- * Safety Compliance officer;
 - Hazardous Waste Operations and Emergency Response (HAZWOPER) 8-hour refresher
 - Course 1000- Initial Compliance 02/03/2017
 - Course 1050- Introduction to Safety Standards 03/30/2017
 - Course 1230- Accident Investigation 05/25/2017
 - Course 2450- Evaluation of Safety and Health Management Systems 06/08/2017

 - Webinar 0037- Fall Protection in Residential Construction 04/03/2017
 - Webinar 015- Powered Industrial Vehicles/Operational Hazards and Applicable Standards

 - Emergency Management Institute- FEMA IS-00100.b and IS-00200b

 - L0954 NIMS ICS All Hazards, Safety Officer Course

(Denotes staff who were hired in either FY 2014 or FY 2015 and who have not yet completed the basic CSHO training track.)*

Progress on Employers' Compliance with OSHA's Revised Injury and Illness Reporting Rule (1904 Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions)

There are signs that employers in Vermont are becoming more aware of the requirement that employers report injuries requiring admission to a hospital. VOSHA has seen an increase in reports from smaller to mid-size employers, which would indicate that the message is getting out. The mandatory reporting requirement has been a good source of inspections. Primarily VOSHA focuses on-site resources on incidents that relate to serious injuries and/or emphasis programs.

Compliance Assistance Activities

In May 2017, VOSHA hosted OTI Course #1230, Accident Investigation. The course was opened nationally and had attendees from as far away as Texas. By all accounts the course and facilities were well received.

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In June 2017, VOSHA hosted the OSHSPA meeting in Burlington, VT. The meeting was a success, with approximately 55 attendees from across the country and Federal OSHA. Though attendance was less than the usual, general feedback from the event was very good and people appreciated being in Vermont for a few days.

VOSHA is committed to its responsibilities at the Vermont Department of Emergency Management and Homeland Security (DEMHS). Though a large-scale emergency drill was not held for 2017, VOSHA staff worked with the Vermont State Urban Search and Rescue Team (USAR) in September. The activity involved two separate search and rescue scenarios. One involved confined space and the other involved a water rescue. VOSHA staff assisted the site safety officer in hazard recognition as well as monitoring the exertional heat exposure of the “players.”

VOSHA also conducted three Green Mountain Voluntary Protections Program (GMVPP) visits in FY 2017. Two of these visits were scheduled recertifications and one was a new site visit. VOSHA is scheduled to conduct two more visits in FY 2018. The site that had the initial onsite visit in FY 2017 was not recognized formally as a STAR site until FY 2018.

VOSHA is committed to three key state agency committees in which it serves as a legislatively appointed entity or representative of the Vermont Department of Labor.

- 1) State Emergency Response Committee (SERC): This is a statewide committee, whose meetings are held bi-monthly at the State Emergency Operations Center (SEOC) in Waterbury. This bi-monthly meeting encompasses the Vermont Department of Public Safety and Homeland Security, VOSHA, Agency of Natural Resources, Vermont Department of Agriculture and Health, among others, and the various Local Emergency Planning Commissions (LEPC's) from around the state. This meeting is usually attended by the VOSHA Manager
- 2) State Elevator Board: This committee consists of the Vermont Department of Public Safety, Fire Prevention Division, various elevator inspection and regulatory entities as well as VOSHA. These monthly meetings are usually attended by the VOSHA Compliance Supervisor
- 3) Vermont Fire Service Training Counsel: This committee which meets quarterly and concentrates on fire service training for volunteers as well as professional fire fighters. The meetings usually include the Director of Fire Service Training, The Vermont Agency of Natural Resources, VOSHA and representatives of local volunteer and professional fire services.

Participation in the above committees is important as it fulfills VOSHA's role in statewide safety and health as required by the state legislature.

VOSHA still maintains two active partnerships.

The 2017 outreach numbers for VOSHA are slightly less than in FY 2016. This is primarily because the large scale statewide emergency drill “Operation Vigilant Guard” happened in FY 2016. In FY 2017 VOSHA was responsible for a total of 63 outreaches. While the VOSHA Manager carried out 42 outreaches, the Compliance Supervisor was responsible for 8 outreaches with the remaining 13 outreaches being direct service of the VOSHA staff while involved in GMVPP and USAR activities.

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It is difficult to quantify the exact numbers of those affected by these outreaches. However, VOSHA can directly count 1,500 attendees and affected employees in formal outreaches including GMVPP related activities.

For additional CAS activities, VOSHA utilizes the services of the Project WorkSAFE administrative assistant for disseminating information to stakeholders, organizing training and outreach materials, and organizing information on the VOSHA website. VOSHA accounts for this employee's time at a .1 FTE.

VOSHA continues its work in the GMVPP. As described above, FY 2017 has been an active year with three onsite visits having been conducted. Part of the reason for the unusually high number of recertifications was VOSHA's role in Operation Vigilant Guard. VOSHA plans to conduct two more visits in 2018, one of which will be a recertification of an existing STAR site. By the end of FY 2018, VOSHA anticipates having seven GMVPP STAR sites.

The GMVPP is still the only formal partnership program that VOSHA recognizes. As such, VOSHA places a high value on maintaining the integrity of this program. Throughout much of 2017 the program was managed by the VOSHA Manager, however in late 2017 the managing responsibility was transferred to the Safety/Health CSHO.

In FY 2014 VOSHA submitted a new, five-year strategic plan. FY 2017 reflects the third year of performance in that plan.

New Equipment

VOSHA is committed to maintaining technology in the equipment (both personal protective equipment (PPE) as well as inspection equipment) used by CSHOs in the performance of their job. In light of this commitment, VOSHA purchased dash cameras for use by CSHOs. These cameras allow for real time photo/video of jobsites and reduce the need for CSHOs to engage in photographing while trying to maintain focus on other duties such as driving. The reviews have been mixed; but while CSHOs get used to using them, there is little doubt that this "tool" can be of great use in establishing hazards (as has already been seen in a couple of key cases) while maintaining a level of safety for CSHOs.

Rulemaking

In 2017, VOSHA submitted and adopted three rules as a result of rulemaking. VOSHA spent considerable time in the Vermont Legislature, marshalling the Penalty Increase and Inflation Adjustment Act through. In addition, VOSHA submitted three other rules: Silica Exposure, General Industry, Construction and Maritime; Improved Tracking of Injuries and Illnesses; and Walking Working Surfaces, General Industry.

The chart below denotes the progress VOSHA has made and expects to make in FY 2018.

Among the standards that were completed in FY 2017:

- Improved Tracking of Injuries and Illnesses
- Silica Exposure, General Industry, Maritime and Construction
- State Increase in Penalties Act, as well as Annual Adjustment for Inflation

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Rules not currently adopted but expected in FY 2018, are as follows;

- Walking Working Surfaces; 1/30/2018
- Beryllium; 6/30/2018

In terms of rulemaking, VOSHA devoted a lot of time to the Penalties Rule, and is one of only a handful of State Plans that finalized adoption of this rule in FY 2017. VOSHA does not have the staff to be able to send through the volume of rules that were issued during the end of the last administration. Walking working surfaces is already in progress. After careful consideration, VOSHA will only submit the General Industry Beryllium Standard and hold off on the Construction and Maritime effort until the final adoption of the rule update for Beryllium in construction and Maritime.

Staffing

After achieving a relatively stable staffing level at the beginning of FY 2017, two CSHOs resigned during the course of the fiscal year. One of the CSHOs resigned in February and was an industrial hygienist; the other was a safety officer who resigned in August. In addition, VOSHA is very concerned that because of a number of years of level funding in the federal grant, it may not be able to sustain the same level of staffing. After much discussion and alerting the Region, VOSHA decided to leave one of the positions unfilled (this was the Industrial Hygienist). VOSHA has posted and is going through the recruitment for the safety position, and anticipates that the position will be filled in the first quarter of FY 2018. The inspection goal for FY 2017 was 300 total inspections total inspections. In spite of the resignations received in FY 2017, VOSHA did not feel it necessary to seek an adjustment in the number. In fact, because of the efforts of the remaining staff, VOSHA was able to conduct a total of 376 inspections for FY 2017. This unexpected number was the result of a high level of experience and skill of the “new” staff, which enables some to be assigned inspections at a higher rate than expected.

Of the 376 inspections conducted in FY 2017, 284 were classified as safety and 92 were classified as health. VOSHA conducted 34 inspections in state and local government and 184 inspections in construction. Of a total of 570 violations issued in FY 2017, 441 were classified as serious and 129 were classified as other than serious.

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	Projected FY2017			Actual FY2017		
	Safety	Health	Total	Safety	Health	Total
TOTAL INSPECTIONS	228	72	300	284	92	376
Private Sector	214	60	274	257	85	342
Public Sector	14	12	26	27	7	34
TOTAL CONSTRUCTION INSPECTIONS	160	20	180	173	11	184
Residential and Commercial Construction	85	5	90	164	7	171
Highway, Street, Bridge and Work Zones	20		20	13	0	13
Roofing	25		25	36	0	36
Residential Construction	30		30	39	0	39
Noise/Silica/Chrome VI/lead		15	15	0	7	7
Total Non-Construction Inspections	80	40	120	111	81	192
Food Processing	2	3	5	12	2	14
Lumber and Wood Products	10	5	15	2	0	2
Targeted NAICS/SICs	15	10	25	16	9	25
Amputations	25		25	20	0	20
Combustible Dust		2	2	0	1	1
PSM		1	1	0	0	0
PIT	10		10	31	0	31
Public Sector	14	12	26	23	7	30
Granite/Concrete	4	6	10	0	3	3
Nursing Homes		1	1	0	0	0

In the tables below, VOSHA compares Calendar Year (CY) 2016 total recordable case (TRC) rates to CY 2012 baseline. It should be noted that FY 2017 is the third year of VOSHA's five-year strategic plan. As such, goals and objectives listed below will reflect those stated in this plan.

STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy		
GOAL	FY 2017 OUTCOME	COMMENT
Compliance Inspection Activities (Construction)		
Performance Goal 1.1—By 2019 reduce the rate of workplace injuries and illnesses in construction by 15%, from 7.9 as	Goal still to be decided	

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STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy		
GOAL	FY 2017 OUTCOME	COMMENT
Compliance Inspection Activities (Construction)		
recorded in baseline year 2012, to 6.7 by year 2019		
Performance Goal 1.1a—Reduce workplace injuries and illnesses in construction by 9 % from the baseline of 7.9 to 7.19	Goal was exceeded	The CY 2016 TRC for all of construction in Vermont 4.2, which is a decrease of 47 percent over the baseline rate of 7.9.
Conduct 90 residential and commercial building inspections	Goal was exceeded	VOSHA conducted 164 safety and 7 health inspections in this area for a total 171.
Conduct 20 highway, street and bridge construction inspections	Goal was not met	VOSHA conducted 13 safety and 0 health inspections in this are for a total of 13.
Conduct 25 roofing inspections	Goal was exceeded	VOSHA conducted a total of 36 inspections in roofing. All were safety related inspections
Conduct 30 inspections at worksites in Residential Construction	Goal was exceeded	VOSHA conducted 39 safety related inspections in Residential Construction
Conduct 15 inspections for health related exposures in construction including Noise/Silica/Chromium VI/Lead	Goal was not met	VOSHA conducted inspections related to noise, silica, chromium VI, or lead

STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy CONTINUED		
GOAL	FY2016 OUTCOME	COMMENT
Compliance Inspection Activities (General Industry)		
Performance Goal 1.2—By 2019, reduce the rate of	Goal still to be decided	

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workplace injuries and illnesses in general industry by 15%, from 6.4 as recorded in baseline year 2012, to 5.4 by year 2019		
Performance Goal 1.2a— Reduce workplace injuries and illnesses in general industry by 9 % over 2012 BLS baseline of 6.4 to 5.82	Goal was exceeded	The CY 2016 TRC for all industries including private, state and local government was 4.7, which is a decrease of 27 % over the baseline of rate of 6.4.
Conduct 5 food processing inspections	Goal was exceeded	VOSHA conducted 12 safety and 2 health inspections, for a total of 14 inspections related to food processing.
Conduct 15 lumber and wood products manufacturing inspections	Goal was not met	VOSHA conducted 2 safety and 0 health inspections for a total of 2 inspections, related to the lumber and wood products manufacturing.
Conduct 25 inspections where there are amputation hazards	Goal was not met	VOSHA conducted 20 safety inspections, related to amputation hazards.
Conduct 10 inspections in the granite and concrete industry	Goal was not met	VOSHA conducted 0 safety and 3 health inspections related to concrete and granite for a total of 3
Conduct 25 inspections establishments in targeted NAICS/	Goal was met	VOSHA conducted 16 safety and 9 health inspections in Targeted NAICS and SIC codes, for a total of 25 inspections
Conduct 26 Inspections of public sector	Goal was exceeded	VOSHA conducted 27 safety and 7 health inspections in public sector, for a total of 34 inspections

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worksites		
Conduct 10 inspections in workplaces where Powered Industrial Trucks (PIT's) are in use	Goal was exceeded	VOSHA conducted 31 inspections in work places where PIT's were in use.
Conduct 1 inspections of Nursing Homes	Goal was not met	VOSHA conducted 0 inspections of nursing homes.
Conduct 1 inspection of a site covered by the PSM standard.	Goal was not met	VOSHA did not conduct inspections in work areas covered under PSM
Conduct 2 inspections in workplaces with combustible dust hazards.	Goal was not met	VOSHA conducted 1 health-related inspections in work areas covered under the combustible dust standard
Strategic Goal #2: Improve workplace Safety and Health through compliance Assistance, Alliances and Partnerships		
Goal	FY 2016 Outcome	Comment
Performance Goal 2.1- Maintain recognition of excellence in safety and health management through the Green Mountain VPP	Goal was met	VOSHA continued to support the current GMVPP sites, including conducting quarterly meetings with the sites and reviewing annual reports. In FY 2017, VOSHA conducted two recertification on site visits as well as one initial certification site visit. VOSHA expects to conduct 1 recertification and 1 initial certification visit in FY 2018.
Performance Goal 2.2- Maintain relationships with organizations that cover targeted, high hazard areas, through the VOSHA Alliance Program	Goal was met	VOSHA continued to service two active alliances. VOSHA continues to have good relationships with these entities and conducted a number of outreaches in FY 2017.

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Performance Goal 2.3- Maintain a reduced schedule of service to Participants in VOSHA's outreach and training programs	Goal was met	VOSHA conducted 63 outreaches affecting more than 1,500 employees/stakeholders. This number represents approximately 100% of the outreach achieved when VOSHA employed a full time compliance assistance specialist (CAS).

Green Mountain Voluntary Protection Program and Alliance Activity

FY 2017 GMVPP Activity

Status	Last Approval Date	New Renewal Date	Original Approval Date
STAR site	04/28/2017	*10/31/2022	10/22/2007
STAR site	4/18/2017	*10/10/2022	8/22/2007
STAR/Renewal	1/22/2015	01/22/2020	5/16/2006
STAR site	2/28/2012	2/28/2017	7/14/2008
STAR site	12/27/2013	12/27/2016	12/27/2013
Challenge site			
STAR site	12/14/2017		*9/11/2017

*denotes onsite conducted

FY 2017 Alliance Activity

	Status	Date signed
Alliance site	Active	11/15/2013
Alliance site	Active	06/29/2015

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PROGRESS TOWARD STRATEGIC PLAN ACCOMPLISHMENT

Vermont BLS TRC rates for the period FY 2015 – FY 2019 have been reduced for all NAICS divisions as follows:

Year	All	Private sector	Manufacturing	Construction	Public sector
2012 (baseline)	5.1	5.0	6.4	7.9	5.6
FY 2015 (based on CY 2014 BLS data)	5.1	5.0	6.0	5.9	5.3
FY 2016 (based on CY 2015 BLS data)	4.6	4.6	5.4	5.9	5.0
FY 2017 (based on CY 2016 BLS data)	4.7	4.6	5.1	4.2	4.8
FY 2018					
FY 2019					
Percent reduction from baseline year 2012					
	-8%	-8%	-21.4%	-47%	-14.3%

In FY 2016 VOSHA had a fully staffed and functional VOSHA program, but in FY 2017, the program experienced a break in this stability. Although VOSHA ended the year with a high level of success in many areas, there were ominous signs warning that budgetary issues were at hand, due to State Plans receiving level funding from OSHA over the past few years. VOSHA was clear about these impending conditions in a letter to the Region prior to submitting the FY 2018 grant. VOSHA was able to keep current with the requirements in OSHA's training directive to the extent that the OTI did not cancel courses. VOSHA plans to keep up with training as required by the current training directive.

Though there was no statewide emergency exercise in FY 2017, VOSHA is committed to increasing its ability to interact with the state emergency management system. This continued activity led to our staff being invited to take part in a smaller scale emergency drill, conducted by the USAR group. Again, while smaller in scale, the event provided further visibility to emergency officials of the ability of VOSHA to provide critical safety and health services in the case of an emergency event.

Because of the professionalism of VOSHA's staff and CSHOs, the Plan was able to conduct 376 inspections; this total is 76 more inspections than the projected number for FY 2017. This FY 2017 goal for inspections was exceeded, even though two CSHOs left the program during the fiscal year. However, losing these two talented individuals and making the decision not to fill one position for budgetary reasons, has been difficult. As a result, VOSHA proposed a reduced inspection amount in the FY 2018 grant application.

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In FY 2017, the VOSHA 11(c) whistleblower program screened 71 complaints, docketed 17 new cases, and closed 14 cases (of the closed, 11 cases were dismissed and 3 cases were settled). VOSHA currently has five open whistleblower cases. In addition, the investigator has provided assistance on a number of VOSHA investigations as well as investigated at least one complaint of workplace violence. These additional duties have enabled VOSHA to take advantage of this investigator's strengths in interviewing witnesses as well as providing advice on the investigation itself.

In FY 2017, VOSHA continued to perform the CAS/GMVPP functions, primarily from the manager and supervisor positions and consultation administrative and CSHO positions (GMVPP site visits) positions. As discussed above, In FY 2017 VOSHA conducted and/or participated in a total of 63 outreach activities. Though outreach activity is slightly less than in FY 2016, (primarily due to the lack of a statewide emergency drill and associated activities) VOSHA feels that the amount of outreaches accounts for the performance of a full-time CAS. -

In FY 2017, VOSHA made progress in reducing its backlog of GMVPP recertification's, and anticipates eliminating the backlog completely by the end of FY 2018. In addition, VOSHA was able to conduct an initial onsite certification visit, which ultimately led to a recommendation that the worksite be accepted as a STAR site. Also in FY 2018, VOSHA plans to conduct another initial onsite for certification into the GMVPP program.

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State of Vermont VOSHA State Internal Evaluation Plan SIEP



The State of Vermont, Vermont Occupational Safety and Health Administration (VOSHA) continues its efforts to improve measurable performance of the VOSHA compliance program. The State Internal Evaluation Plan (SIEP) is a self-evaluation tool, initiated to determine if program operations conform to state policies and procedures established by the state plan. Through the SIEP, VOSHA identifies and evaluates program functions that may need to be improved in response to the demands of the program.

Following a review of program procedures and a review of OSHA Information System (OIS) Reports, VOSHA decided to evaluate the following area of possible vulnerability:

- Abatement tracking and documentation

Questionnaires for Selected areas

1. Is abatement at the time of the inspection documented in the case file?.

Answer: From the limited sample reviewed, it appears that there is proper justification and documentations placed in the case files.

2. Are mandatory follow-up inspections tracked?

Answer: Two Follow-up inspections were reviewed. In those cases the VOSHA Administrative Assistant indicated in the OIS "Not Abated" then in the citation notes, the assistant placed a

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note for each citation that a follow-up inspection was done and the date/CSHO doing the follow-up.

5. Are follow-up inspections conducted when there is no abatement documentation?

Answer: Follow-up inspections are not done in a consistent manner. This is an area that VOSHA needs to focus on in FY 2018.

6. Is adequate evidence of abatement received in accordance with the Field Operations Manual (FOM)?

Answer: The review of randomly selected casefiles reveals satisfactory documentation of abatement evidence, both in letters and photos. However, VOSHA can still improve on the process.

7. How are open abatement dates tracked?

Answer: Open abatement dates are tracked via both the Open Inspection Report and the Abatement tracking report. Both reports are available in the OIS. However VOSHA sees that an increase in frequency of at least once per week could be helpful in staying current. This is a responsibility that the VOSHA manager should undertake.

8. Are late notices sent to employers that do not submit timely documentation?

Answer: In cases reviewed, late notices were sent out but not consistently. When examined it was found that the primary reason that a late notice was not sent was that the case was sent over for collection and the file was not available to VOSHA for some months. However on those that were not sent to collections it seemed that late notices of abatement were adequately sent out.

9. Is there an explanation in the file for abatement dates longer than 30 days?

Answer: The VOSHA manager and Compliance Chief place explanations in the files if an employer asks for and receives an "extended" abatement date.

10. Is the OIS properly updated?

Answer: Reviews of the tracking reports revealed that the OIS was updated. However, in cases where a collections process was ongoing, there was no updating of information concerning abatement. A solution to this finding is discussed in the action items section.

Methods of Evaluation

In conducting the evaluation of the effectiveness of VOSHA's Abatement Documentation program, we first looked at raw data from the OIS in the following reports:

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- Abatement tracking report
- Open Inspection Report

Following the running of these reports, VOSHA selected five cases, randomly, from FY 2017 to see if/how abatements were documented and tracked.

VOSHA's Findings

OIS tracking reports

In running the tracking report, VOSHA found that there was a large number of cases listed as overdue for abatement (32) including, and, more concerning, a large number of cases over 100 days (24). However, when investigated further, it was found that virtually all of the cases over 100 days were “no-responders” who had been placed into debt collection process. In many of these cases, the employers did not respond to the citations, and VOSHA did not follow-up with these employers on abatement. Most of the cases reviewed did not have late abatement letters in the file because VOSHA was not tracking the overdue abatement. A review of these cases revealed that VOSHA still needs to track abatement for cases that it has referred to debt collection. More specifically, VOSHA needs to follow the procedures in the VOSHA Field Operations Manual (FOM) for debt collection (Chapter 6) and employer failure to submit required abatement (Chapter 7).

Randomly Selected Cases

- Case #1:-
This case was settled in an informal conference by the VOSHA Manager. In this case the Employer brought sufficient documentation of abatement of the violations. The VOSHA Manager noted both in the informal settlement agreement and in the case diary, that the employer provided abatement at the informal conference. An appropriate closeout letter was sent to the employer relating to both payment in full and abatement.
- CASE #2:-
This case was settled at an informal conference by the VOSHA Compliance Chief. In this case the Compliance Chief Documented in the case diary “abated per CSHO.” When reviewing the documentation it was found that in the Citation, the CSHO applied the “Quick Fix”. The CSHO indicated that the employer agreed to stop the activity until the appropriate equipment could be brought to the site and make it compliant. An

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appropriate closeout letter was sent to the employer subsequent to payment of penalties, identifying both payment in full and abatement.

- Case #3:-

This case was settled via informal conference by the VOSHA Compliance Chief. The Compliance Chief noted in the case diary "...abated in a timely manner per letter."

A review of the casefile reveals an abatement letter from the employer, with associated photos/documents was placed in the file. An appropriate closeout letter was sent subsequent to payment of penalties identifying both payment in full and completed abatement.

- CASE #4:

This case was not heard either in an informal conference or formal contest proceeding.

The employer paid in full the citation amount and did not provide abatement verification.

The case was later closed without abatement due to change in worksite location (construction). However a letter was sent from the VOSHA office informing the employer that we had received both payment in full and all abatements. This letter was a form letter and the language covering abatements was not taken out of the letter. This was an error of the VOSHA Central Office.

- CASE #5:

This case was settled via an informal conference by the Compliance Chief. In this case the Compliance Chief noted on the case diary "abated per email." A review of the case revealed that the employer, previous to the informal conference had emailed the Compliance Chief an abatement letter with attached photos of the abatement. The appropriate closeout letter was sent subsequent to payment of penalties identifying both payment in full and abatement.

Findings from the review of casefiles

The FY 2017 casefile review revealed that there seemed to be a relatively trackable way to both acknowledge abatements when they have been completed prior to or evidence of abatement submitted at the informal conference. However an error was uncovered when a letter acknowledging abatement was sent to the employer in a case where the employer did not engage and simply paid their penalty. This seems to be an issue with the form letter that is sent to employers. The letter lists both payment in full and recognition that abatements were completed in the same letter.

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Also there were inconsistencies in how abatements were documented at the informal conference level.

VOSHA Action Items

Action Items related to the casefile reviews

VOSHA will take the following measures to improve a process that is strong but could be better.

- a. VOSHA will start using a version of the “Certification of Corrective Action Worksheet” used by Region One OSHA. This sheet will be modified to include VOSHA policy and will be printed from the OIS
- b. The VOSHA manager and Compliance Chief will insure that in addition to a notation in the casefiles regarding status of abatement at the informal conference, any future abatement agreements and actions, including dates of expected completion will be added to the informal settlement agreement, compelling the employer as well as VOSHA to sign off on them.
- c. The VOSHA manager will start a weekly routine of running the Open Inspection and Abatement tracking reports. This responsibility was previously done by the compliance supervisor
- d. VOSHA will follow the procedures in Chapter 7 of the FOM, for Employer Failure to Submit Required Abatement Certification, which entails contacting the employer by telephone and mailing a letter the same day.

Action Items related to review of Open Inspection Report and Abatement Tracking report

- a. VOSHA will immediately start working on the legacy cases in the report, specifically assigning follow-up inspections where needed and closing those inspections (construction) where verification cannot be ascertained as the job site no longer exists.
- b. Prior to any case going to debt collection, VOSHA will review to insure abatement has been completed or make sure VOSHA is current with the notification of abatement.
- c. Prior to referring any case to debt collection, VOSHA will ensure that abatement has been completed. If abatement has not been completed, VOSHA will follow the procedures in the VOSHA FOM, Chapter 7 for Employer Failure to Submit Required Abatement Certification.

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- d. VOSHA believes that the action items above will help reduce future backlog of abatement overdue cases. However, VOSHA will actively monitor this item as the year goes on to insure abatement is properly addressed as well as tracked.
- e. Once the case is remanded to debt collection, VOSHA will maintain tracking in the OIS. If VOSHA receives proper notice of abatement, the documents will be manually placed in the file and the file will be updated. The OIS will then be updated as to the status of abatements. If the employer fails to submit appropriate documented abatement, VOSHA will conduct follow-up as per Chapter 7 of the FOM.